

STATE OF COLORADO

Bill Ritter, Jr., Governor
Martha E. Rudolph, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

July 29, 2010

James B. Martin
Regional Administrator
US EPA Region 8
8OC-EISC
1595 Wynkoop Street
Denver, CO 80202-1129

Re: Colorado's Response to NSR Tailoring Rule Approach

Dear Jim:

This letter serves as Colorado's submission pursuant to EPA's greenhouse gas NSR Tailoring Rule, which requires that states notify EPA by August 2, 2010, regarding how they intend to implement the Tailoring Rule. *See*, 75 Fed. Reg. 31514, 31525 (June 3, 2010).

Colorado does not currently intend to implement EPA's NSR Tailoring Rule at thresholds below the levels EPA promulgated under Steps 1 and 2 of the rule. *See*, 75 Fed. Reg. at 31516. EPA's NSR Tailoring Rule requires all states seeking to regulate GHGs below the tailored threshold levels to demonstrate their ability and capacity to handle the additional PSD and Title V permitting workload. Colorado cannot make such a demonstration of available resources. Accordingly, Colorado requests pursuant to the NSR Tailoring Rule that EPA limit approval of Colorado's PSD SIP and delegated Title V Operating Permit program using EPA mechanisms discussed in the rule to match the tailored greenhouse gas threshold levels for permitting requirements. Based on conversations with EPA Region 8 and OAQPS, it is our understanding that EPA will curtail Colorado's regulatory authority under the PSD and Title V Permitting Programs prior to the January 2, 2011 deadline when greenhouse gases become subject to regulation under the Clean Air Act permitting programs.

In addition to the foregoing federal limitations, Colorado will also pursue conforming state regulatory changes. The Air Pollution Control Division (APCD) at the Colorado Department of Public Health and Environment (the department) requested a rule-making hearing to propose regulatory revisions to Colorado's Common Provisions and to Regulation No. 3 on July 15, 2010. Colorado's Air Quality Control Commission (AQCC) granted the request and set the hearing for October 21, 2010. Through

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this rule-making, the APCD intends to apply the meaning of "subject to regulation" established by EPA's NSR Tailoring Rule and to revise the Common Provisions and Regulation No. 3 in a manner that largely mirrors EPA's regulatory changes under EPA's NSR Tailoring Rule. Final regulatory changes are expected to be determined by the AQCC at the October 21, 2010 hearing, however, the timing or outcome of these proceedings cannot be guaranteed.

If the AQCC approves the proposed regulatory changes at the October 21 hearing, the revised regulations would likely take effect on November 30, 2010. By the end of December, the department would intend to submit the proposed PSD SIP changes to EPA for possible conditional approval. The department would then submit in January 2011 the regulatory changes for legislative review in accordance with state statute. The legislative review of the GHG Tailoring Rule regulatory changes would conclude in the winter or spring of 2011, and the department would subsequently submit them to EPA for consideration and approval. We will inform EPA Region 8 as soon as possible should this timeline change based on AQCC or legislative actions.

Please feel free to contact me with any questions.

Sincerely,



Martha E. Rudolph
Executive Director
Colorado Department Public
Health and Environment

cc: Paul Tourangeau, Director, Air Pollution Control Division, Colorado Department of Public Health and Environment
Doug Lempke, Administrator, Air Quality Control Commission, Colorado Department of Public Health and Environment
Kirsten King, Program Manager, Air Pollution Control Division, Colorado Department of Public Health and Environment
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